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Rethinking ASBOs

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What is This?

Rethinking ASBOs

Abstract

Increasing criticism has accompanied the rising numbers of Anti-Social Behaviour Orders (ASBOs) imposed. In this short paper we review some of our own recent research findings in conjunction with other recent commentaries to question whether the declared intentions behind the introduction of the ASBO are being achieved in practice. We argue that there are a number of fundamental problems with ASBO enforcement. We conclude by urging for the resurrection of a critical and reflective practice in community safety policy development and implementation and for a recognition that there are more just and effective alternatives to our current, seemingly 'enforcement led', interventions.

Key words: anti-social behaviour, community safety, discipline, enforcement, youth

Introduction

Increasing controversy surrounds the Anti-Social Behaviour Order (ASBO). To begin with, a number of critics (Ashworth et al., 1998) had voiced reservations about the departures from criminal due process represented by ASBOs. Secondly, research findings began to emerge, including our own analysis of anti-social behaviour (ASB) enforcement activity (Stephen and Squires, 2004; Squires and Stephen, 2005), which were critical of the balances being struck between enforcement and support for ASB perpetrators and their families. Thirdly, there was evidence of some blurring of purpose in the use of ASBOs (the recent attempt to use an ASBO to restrict the political activities of peace campaigners (Wainright, 2005) is a case in point). Furthermore, evidence also began to emerge of a gap between community perceptions of ASB and the authorities' enforcement priorities (Squires et al., 2004). Finally, April 2005 saw the launch of

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ASBO Concern,¹ an alliance of professional, legal and advocacy groups dedicated to campaigning for the abolition of the orders.

Acknowledging that there are a number of fundamental problems with the orders as presently implemented, and which we have discussed at length elsewhere (Squires and Stephen, 2005), this short article reviews the underlying purposes of the ASBO within the government's crime and disorder strategy and considers the extent to which a more constructive and supportive, perhaps 'damage limitation' approach to ASB prevention might be substituted for today's seemingly enforcement driven approach.

Examining the ASBO industry

The first years of the ASBO saw relatively low numbers of orders actually imposed (Burney, 2002). By contrast, with the more recent 2003 Anti-Social Behaviour Act, the Home Office *Together*² campaign and the despatch of ASBO Ambassadors to galvanize the less enthusiastic Crime and Disorder Reduction Partnerships, the number of orders has been increasing significantly. By the end of September 2004, 3,826 orders had been issued, over 3,100 of them in the 18 months after April 2003.³

Yet as the numbers of orders have grown, so have the criticisms. The main anti-social behaviour measures, notably Orders and Contracts (Acceptable Behaviour Contracts) are facing a rising tide of criticism, not least from ourselves (Stephen and Squires, 2004; Squires and Stephen, 2005; Stephen, 2005), on grounds of justice and rights and by virtue of the broad and arbitrary definitions of prohibited behaviour upon which they are often based. Likewise the impact and effectiveness of ASBOs has been questioned and especially the lack of appropriate evaluation. Finally, there is growing scepticism concerning the consequences of ASBOs for some of the most deprived and excluded families and communities.

As well as the launch of ASBO Concern, April 2005 saw the publication of the Home Affairs Select Committee Report on Anti-Social Behaviour (House of Commons, 2005). The Report disappointed many critics by virtue of its broad declaration of support for the government's ASB strategy even though a number of the conclusions reached by the Select Committee pointed to ambiguities and implied criticisms of some current ASB enforcement practice.

One issue included the requirement that local communities be more fully involved in the process of defining locally what is to be treated as ASB (House of Commons, 2005: 28). This issue arose in the Scottish Parliament's consultation on ASBOs (Flint et al., 2003) and is regarded as important in order to forestall suggestions that the ASBO strategy lacks accountability to the communities it is supposed to be serving. Nevertheless, attempts to foster such local accountability do not sit comfortably with wider concerns about the tensions inherent in defining ASB (e.g. Squires and Stephen, 2005; Stephen, 2005). A broader anomaly is the seeming mismatch between what the British Crime Survey (BCS) 'perceptions of ASB' survey reveals to be the chief concerns of its respondents and the actual patterns of enforcement being adopted. Aside from additional measures such as curfews and dispersal orders specifically designed for youth, something like three-quarters of ASBOs are imposed upon voung people (Campbell, 2002). Yet 'teenagers hanging around' only emerged as the sixth priority for BCS respondents, behind speeding traffic, inconsiderate parking, rubbish or litter, fireworks, and vandalism and graffiti (Thorpe and Wood, 2004, see also Squires et al., 2004). There are important balances to be struck between legality and accountability, but an illusion of accountability regarding enforcement priorities alone will not suffice. Establishing genuine local accountability is a far cry from the selective reinforcement of local intolerances, divisions and social conflicts to which existing action on ASB appears prone.

A second set of issues identified by the Select Committee concerned the balance between enforcement and support in ASBO work (House of Commons, 2005: 44). The Committee rejected a view that the policy was overly reliant upon enforcement and was too punitive to children and young people, pointing out that in many areas legal powers were only resorted to as a last resort. At the same time, however, they argued that in some areas the ASB strategy was being undermined by key players adopting different and inconsistent approaches often reflecting local disagreements about the levels of support available to individuals (House of Commons, 2005: 4). The Committee recommended the targeting of more support towards those perpetrators of ASB in greatest need, acknowledging that, in this way, more might be achieved than by enforcement alone. This is an issue we raised in our own research (Stephen and Squires, 2003) and was itself belatedly acknowledged by the Home Office in a press release dated 14 February 2005 (Home Office, 2005a). Although the Home Office press release still resorted to the pejorative label 'Neighbours from Hell' it recognized that offending behaviour may not be the result of simple malice, recklessness or neglect but, rather, a consequence of significant physical, psychological or emotional problems. In such cases, support rather than enforcement and more holistic forms of intervention, exemplified perhaps by the Dundee Families Project (Dillane et al., 2001), seem to offer more lasting solutions. Such a concession is long overdue, although ensuing rhetoric (e.g. Home Office, 2005b) did not inspire too much hope for any immediate or significant change in direction.

Thirdly, the Committee explicitly criticized the government for failing to evaluate its ASBO enforcement strategy effectively. This might be seen as a major failing for an administration committed to 'evidence led' policymaking. Perhaps especially concerning is the emerging evidence of the rates at which ASBOs are breached. The Select Committee reported evidence that, overall, 42 per cent of ASBOs imposed between June 2000 and December 2003 were breached (just under 800) and of these 55 per cent resulted in custodial sentences (House of Commons, 2005: 64). The Committee pointed out that the overwhelming majority of custodial penalties for breach of an ASBO were not awarded for the breach of the ASBO alone and noted that the breach and custody rates for ASB compared favourably with other Youth Justice Board programmes such as the Intensive Supervision and Surveillance Programme (ISSP). However, this is hardly to compare like with like. Initiatives such as ISSP are specifically designed to be high-tariff alternatives to custody for an identified group of serious or persistent offenders. By contrast the promise of the ASBO was that it would enable crime and disorder, even 'pre-criminal nuisance', to be 'nipped in the bud'. If, as critics have noted the ASBO simply widens the net and steepens the tariff encountered by young people, this can scarcely be regarded as a successful outcome. In the light of this the failure to undertake a proper evaluation of how ASBOs are being used and the consequences of their use seems all the more serious. Large-scale national evaluations accompanied the rolling out of all the other new youth justice orders after 1998; if the ASBO was such a central component of the overall strategy, it is strange that its evaluation has been overlooked.

Finally, of course, if combating ASB is such a central feature of the government's crime and disorder plans, then a known breach rate of

over 40 per cent rather tarnishes the impression that the government likes to give that the problem is resolved once an order is imposed. If only all enforcement action were so simple! We have noted that, in the case of ASB, public perceptions are key to this issue (Squires and Stephen, 2005). Tonry (2004), for one, has argued that the government, in launching a new 'politics of intolerance' (see also Stephen, 2005) regarding the behaviour of various 'others', may have fashioned a rod for its own back if the public at large do not experience the benefits the government has promised.

Communities and the politics of behaviour

A great deal has been invested in tackling anti-social behaviour. Both supporters and critics have acknowledged the enormously symbolic character of the order. For the former, ASBOs represent a sphere of policy action in which governments might actually achieve something. 'The current governmental preoccupation with petty crime, disorder and ASB reflects a sense of "anxiety" about which something can be done in an otherwise uncertain world' (Crawford, 2002: 31–2). Addressing the supposedly unacceptable behaviour of some people in this way is ultimately much more real and immediate to many than longer term commitments to address social exclusion and its underlying causes (Stephen, 2005).

More supportive commentators have drawn attention to certain virtues they claim for the 'enforcement of obligations' (Deacon, 2004) as exemplified by the ASBO. It fills an apparent 'enforcement deficit' at the level of localized crime and disorder by facilitating a shift in our thinking. We can now address the cumulative impact of a range of incidents and behaviours which, individually, might seem relatively minor but become intolerable when endured on a daily basis (Hansen et al., 2003). That said, while some have complained that *some* definitions of ASB take in behaviour that is perfectly legal, a clear majority of the activities and behaviours likely to attract an ASBO and virtually all of the incident categories included in the ASB daycount, during September 2003, were already criminal activities (Home Office RSD, 2003). This rather confirms that the novelty of the ASBO is little to do with some intolerable new behaviours unique to late modernity. Rather it is more concerned with streamlined community-based enforcement processes rooted in 'contractual governance' (Crawford, 2003). To that extent ASB enforcement processes reveal, after all, their origins in the paradigm shift which occurred in crime prevention thinking a decade and a half ago and brought forth the notion of 'community safety' (Morgan, 1991).

Community safety was once heralded as a potential new field for social policy development (Barton and Gilling, 1997) but is now turning into the rather more narrowly selective process of 'community enforcement' (e.g. Gilling, 2001). Almost inevitably, as in any policy field, community safety has had its winners and losers (e.g. Flint, 2002), all the more so as an increasingly consumerist approach to crime prevention resourcing has begun to be reflected in people's local policing priorities (Squires, 1998). As Brown and others have noted, one of the major losers in these localized policy development circles has been young people. The establishment of new community liaison groups, neighbourhood watch associations and crime prevention panels which have given voice to community safety concerns has been 'dominated by residents . . . more commonly in their 50s and 60s', whose chief function appeared to consist in recycling the 'respectable fears' of adults primarily about children and younger people (Brown, 1998: 46). Therefore policymaking has largely focused upon resolving the problems that young people cause for adults. A further implication of the emerging community safety perspective is dramatically revealed in Hope's longitudinal analyses of the BCS which show a very significant redistribution of victimization since the early 1980s (Hope, 2001).

Taken together, such outcomes might suggest that adopting a community perspective, in other words, responsibilizing communities (e.g. Flint, 2004), can result in the focusing of existing fears, concerns and intolerances, empowering them and incorporating them within the recently constructed community enforcement processes. Tony Blair's August 2004 speech (Blair, 2004), *A New Consensus on Law and Order*, given to mark the launch of the Home Office's five-year crime and disorder strategic plan, evoked a precise vision of 'authoritarian communitarianism' (Hughes, 1998). The Prime Minister spoke of putting the 'decent, law abiding majority' in charge, re-balancing the criminal justice system in favour of the victimized whilst seeing 'government' in terms of 'taking sides' with the decent and responsible majority.

In the process, significant accountability deficits have emerged: only some communities appear to be genuinely embraced as partners in this enforcement driven process, others only seem to feature as targets of the enforcement action. For example, in a London borough where we have recently undertaken a 'public perceptions of ASB' study, a comment made by one of the partnership members asserted that 'ASB only occurs on social housing estates'. While this claim was rejected by others at the same meeting, we encountered enough evidence of similar views (Squires et al. (2004), and corroborated by Thorpe and Wood's (2004) finding from the BCS data) to suggest that, in many areas, a significant factor in the support for ASBO enforcement action may originate in class and community prejudices. Now that these sentiments are given the force of law, if not the usual trappings of legality (such as justice, due process and a fair trial, proper opportunities to test the evidence and so on), the fuller ramifications of the ASB enforcement begin to become apparent.

This can be further reinforced when local authorities distribute leaflets depicting the photographs of young people to whom ASBOs have been issued, along with the conditions imposed by the court, soliciting the assistance of residents in monitoring the compliance of the young people concerned. This is justified in terms of aiding the enforcement process, but it also serves to forcefully 'name and shame' certain individuals, irrespective of the consequences. The same might be said of Guildford's 'wall of shame' (a large public wall onto which the pictures and details of ASBO recipients are projected 'for public information') and the increasingly common practice of the tabloid press of displaying the photographs of so-called 'neighbours from hell' in a campaign of vilification not unlike those faced in the past by 'benefit scroungers', single parents and, once again, immigrants and asylum seekers. Britain's 'naming and shaming' is supposedly based upon the practice of reintegrative shaming and underpinned by a broader philosophy of restorative justice (Braithwaite, 1989), except in Britain's case the shaming appears to isolate the already excluded whilst offering little in the way of opportunities for reintegration.

Critical practice and community safety

If our analysis of the recent emergence of ASB enforcement from its 'community safety shell' and our critique (along with many others) of

the ASBO itself are accepted, it may suggest a way of connecting a more critical politics with ASB management. Criticizing ASB management need not imply a downplaying of the impact and seriousness of ASB for those on the receiving end of it but it does question whether ASBOs are themselves an effective or, given the loss of rights and due process they entail, a just solution.

Amongst the changes that recent years have seen in the organization of our public services, the loss of a strand of organized and informed 'critical practice' has been especially notable and, arguably, ought to be of central significance to a journal such as *Critical Social Policy*. There are undoubtedly many causes, for example, the erasing of 'radical social work' (Bailey and Brake, 1975) or the eclipsing of 'critical probation practice' (Walker and Beaumont, 1981). The relentless managerialism and consumerism of recent years plus service cuts and restructuring, and the creation of new agencies, roles and partnerships have all played their part. Especially in the case of the probation and youth justice services, there has been a serious and largely successful attempt to effect an entire culture shift in the orientation of the services, where the adoption of nationally validated programmes has further undermined the professional discretion of practitioners (Squires and Measor, 2005).

In the case of the emerging field of community safety policy, where a disparate group of practitioners from a wide range of service sectors coalesced around a range of crime prevention, community safety or quality of life priorities, a clear uniformity of purpose or direction was difficult to discern. For instance, in 1996 when the Local Government Management Board undertook a national survey of local government community safety activities the top four issues cited were the decidedly mixed bag of: young people, drugs, closed circuit television and fear of crime (LGMB, 1996). Community safety, in practice, never lived up to its broader ambitions. New Labour prioritized crime and disorder management in 1998 and now this has, in turn, become substantially refocused around ASB work. ASB has come to claim the lion's share of resources and the scope for critical practice here might seem rather limited.

In sharp contrast, however, one of the most refreshing aspects of the launch of the ASBO Concern campaign during April 2005 was the manifest evidence of a wide range of people, often working in local authorities and voluntary sector agencies, articulating a fairly coherent complaint about the injustice, inappropriateness and ineffec-

tiveness of ASBOs. Many of the people criticizing the enforcement driven approach to ASB were themselves working in local authority community safety teams, sometimes alongside ASBO strategy coordinators. Such people, bypassed in the current rush to enforcement, are likely to be the sources of an alternative and critical community safety practice which emphasizes support, welfare, social justice and needs and the requirement to address social exclusion issues (rather than exacerbate them) through restorative justice approaches and locally accountable mediation initiatives. So where the Home Affairs Select Committee (House of Commons, 2005) alluded to the need to strike an appropriate balance between enforcement and support, where it commented upon the need to disseminate good and effective practice or where it acknowledged that many local authorities only applied for ASBOs as a last resort, it also suggested that there were a wide variety of approaches that might be adopted. It also confirmed that enforcement alone was unlikely to provide a solution.

Similar conclusions are also beginning to emerge from a range of commentaries on effective practice in youth justice and ASB prevention. For example, Thomas et al. (2004) report that a number of guidelines are now emerging as pointers towards better, more inclusive and preventive practice in relation to youthful ASB – in contrast to a simple emphasis upon enforcement. These include: early discussion of cases involving juveniles by informed partnerships, the establishment of clear and effective protocols for dealing with cases (and appropriate training), resorting to ASBOs only as a last resort, recognition of the needs and concerns of victims, appropriate support to victims and perpetrators, very careful consideration given to any publicity regarding cases, and close monitoring and, where necessary, appropriate reviewing of orders where circumstances or behaviour patterns change.

Notwithstanding the above, the primary aim of ASBO Concern is still the abolition of the ASBO itself. However, developing a campaign to achieve this will depend upon two things. It is necessary to show, firstly, that ASBOs are unfair, unjust, disproportionate, stigmatizing, criminalizing and ultimately ineffective. Secondly, it will be important to demonstrate that fair, positive and effective alternatives exist, policies which do not simply increase welfare conditionality, intolerance, social exclusion and punitiveness, but which also seek to address the underlying causes of each.

Notes

- 1 www.asboconcern.org.uk.
- 2 www.together.gov.uk.
- 3 www.crimereduction.gov.uk/asbos2.htm.

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